

ESTTA Tracking number: **ESTTA710728**

Filing date: **11/24/2015**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91224312
Party	Plaintiff CH Realty VI/H Denver Brown Palace L.P.
Correspondence Address	Charles E. Phipps, Esq. Locke Lord LLP 2200 Ross Avenue, Suite 2200 Dallas, TX 75201 UNITED STATES cphipps@lockelord.com, RNail@lockelord.com, plein@lockelord.com, dadocket@lockelord.com
Submission	Motion for Default Judgment
Filer's Name	Charles E. Phipps, Esq.
Filer's e-mail	cphipps@lockelord.com, RNail@lockelord.com, plein@lockelord.com, dadocket@lockelord.com
Signature	/Charles E. Phipps/
Date	11/24/2015
Attachments	Motion for Default Judgment.pdf(6441 bytes) Exhibit A (DJ Motion).PDF(2221155 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

CH Realty VI/H Denver Brown Palace L.P.	§	
	§	
Opposer,	§	Serial Number: 86/204,107
	§	Mark: CHURCHILL STEAK
v.	§	HOUSE & DESIGN
	§	Filed: February 25, 2014
	§	Published: September 15, 2015
	§	
The Prosperity Project LLC,	§	Opposition Proceeding No.: 91224312
Applicant.	§	

MOTION FOR DEFAULT JUDGMENT

Opposer hereby moves for the Board to issue a Notice of Default against Applicant.

As grounds in support of this Motion, Opposer asserts the following:

1. Opposer filed its Notice of Opposition in this proceeding on October 13, 2015 and the Board instituted this proceeding on that same date.
2. Pursuant to the Board's October 13, 2015 scheduling order and trial schedule, Applicant's deadline to file an Answer in this proceeding was November 22, 2015 (with Applicant having had until Monday, November 23, 2015 for timely filing of an Answer, as per 37 C.F.R. § 2.196).
3. Per Exhibit A attached hereto and incorporated herein by reference, Opposer submits proof of service concerning its Notice of Opposition filed with the Board on October 13, 2015, including a certified mail return receipt postcard date stamped by the United States Postal Service on October 19th, 2015 and signed by counsel for Applicant.
4. As of November 24, 2015, Applicant has failed to file an Answer in this proceeding.

5. Pursuant to Rule 55 of the Federal Rules of Civil Procedure and 37 C.F.R. § 2.114(a), Opposer respectfully moves for entry of a Default Judgment by the Board against Applicant for failure to file an Answer in this proceeding.

WHEREFORE, Opposer prays that this Motion be granted and that the Board issue a Notice of Default against Applicant.

Respectfully submitted,

Date: November 24, 2015

/s/ Charles E. Phipps
Charles E. Phipps
Paul Lein
Robert E. Nail
Locke Lord LLP
2200 Ross Avenue, Suite 2200
Dallas, TX 75201-6776
214/740-8441
214/740-8441(Fax)

**ATTORNEYS FOR OPPOSER
CH REALTY VI/H DENVER BROWN
PALACE L.P.**

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion for Default Judgment was mailed via U.S. Certified mail, return receipt requested, to the following counsel of record for Applicant this 24th day of November, 2015:

Barry L. Haley
Malin Haley Dimaggio & Bowen PA
1936 South Andrews Avenue
Fort Lauderdale, Florida 33316

/s/ Robert E. Nail
Robert E. Nail

EXHIBIT A



Attorneys & Counselors

2200 Ross Avenue, Suite 2200
Dallas, Texas 75201-6776
Telephone: 214-740-8000
Fax: 214-740-8800
www.lockelord.com

Robert E. Nail
Direct Telephone: 214-740-8779
Direct Fax: 214-756-8779
RNail@lockelord.com

October 13, 2015

VIA CERTIFIED MAIL NO. 92147969009997901604332283
RETURN RECEIPT REQUESTED

Barry L. Haley, Esq.
Malin Haley Dimaggio & Bowen PA
1936 South Andrews Avenue
Fort Lauderdale, Florida 33316

Re: Notice of Opposition filed with Trademark Trial and Appeal Board concerning
U.S. Service Mark Application Ser. No. 86/204,107 for CHURCHILL STEAK
HOUSE & DESIGN

Dear Ms. Haley:

Please find the enclosed copy of a Notice of Opposition filed with the Trademark Trial
And Appeal Board on October 13, 2015 on behalf of our client CH Realty VI/H Denver Brown
Palace L.P., with respect to the above-captioned pending U.S. service mark application owned
by The Prosperity Project LLC.

Please contact us directly should you have questions.

Sincerely,

LOCKE LORD LLP

A handwritten signature in black ink, appearing to read "Robert E. Nail".

Robert E. Nail

Enclosure

cc: Charles E. Phipps, Esq. (Firm)
Paul Lein, Esq. (Firm)

Batch #: 9
Article #: 92147969009997901604332283
Date/Time:

Code2: 0042016.00182

Internal File #:
Internal Code:

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

CH Realty VI/H Denver Brown Palace L.P.	§	
	§	
Opposer,	§	Serial Number: 86/204,107
	§	Mark: CHURCHILL STEAK
v.	§	HOUSE & DESIGN
	§	Filed: February 25, 2014
	§	Published: September 15, 2015
The Prosperity Project LLC,	§	
	§	Opposition No.: _____
Applicant.	§	

NOTICE OF OPPOSITION

Opposer, CH Realty VI/H Denver Brown Palace L.P., a Delaware limited partnership having its principal place of business at 3819 Maple Avenue, Dallas, Texas 75219 ("Opposer"), believes that it will be damaged by registration of the above-identified mark CHURCHILL STEAK HOUSE & DESIGN shown in U.S. Service Mark Application Serial No. 86/204,107 ("Applicant's '107 Application" or the "'107 Application") owned by Applicant The Prosperity Project LLC, a Florida limited liability company having its principal place of business at 11661 NW 68th Terrace, Doral, Florida 33178 ("Applicant"), and hereby opposes the same under the provisions of the Trademark Act of 1946, § 1063 of Title 15 of the United States Code, as amended.

This Notice of Opposition is timely filed, given the September 15, 2015 publication date of Applicant's '107 Application.

The grounds for opposition are as follows:

1. Opposer is a highly regarded provider of restaurant and bar services ("Opposer's Services") under the service mark CHURCHILL BAR (the "CHURCHILL BAR Mark") and is the owner of said mark.

2. Opposer is the owner of all right, title and interest in and to pending U.S. Service Mark Application Ser. No. 86/313,367 for its CHURCHILL BAR Mark filed on June 18, 2014 covering Opposer's Services in International Class 43 ("Opposer's '367 Application").

3. Well prior to Applicant's filing of its '107 Application for the mark CHURCHILL STEAK HOUSE & DESIGN or the date on which Applicant can claim priority, Opposer adopted and has continuously used its CHURCHILL BAR mark in U.S. interstate commerce in connection with Opposer's Services.

4. More particularly, Opposer has continuously used its CHURCHILL BAR Mark in connection with the advertising and marketing of Opposer's Services throughout the United States since at least as early as February 1, 1996, and during such time Opposer has gained valuable public recognition of its CHURCHILL BAR Mark as identifying Opposer as the source of Opposer's Services. Accordingly, there is no issue as to priority or Opposer's status as the senior user of its CHURCHILL BAR Mark in U.S. commerce.

5. Opposer, through more than nineteen (19) years of continuous advertising and marketing of Opposer's Services in commerce under its CHURCHILL BAR Mark, has built up, at great expense and effort, a valuable reputation and goodwill symbolized by said mark, which reputation and goodwill would be irreparably damaged and injured by Applicant's registration of the confusingly similar mark CHURCHILL STEAK HOUSE & DESIGN.

6. On February 25, 2014, more than eighteen (18) years after Opposer first used its CHURCHILL BAR Mark in commerce in connection with marketing and advertising of Opposer's Services, Applicant filed its '107 Application seeking registration of the confusingly

similar mark CHURCHILL STEAK HOUSE & DESIGN ("Applicant's proposed mark") for use with *"bar and restaurant services; restaurant and catering services; restaurant services; restaurant services, including sit-down service of food and take-out restaurant services; restaurant services, namely, providing of food and beverages for consumption on and off the premises"* in Class 43 ("Applicant's Services"), such application having initially been filed by Applicant as use-based under Section 1(a) of the Trademark Act, but then subsequently amended by Applicant on November 8, 2014 to an intent-to-use filing basis under Section 1(b) of the Trademark Act (due to Applicant's inability to provide evidence of actual use of its mark in commerce at that time).

7. On September 25, 2014 the USPTO issued an Office Action citing Applicant's '107 Application as a potential likelihood of confusion obstacle against registration of Opposer's CHURCHILL BAR Mark, with the Office subsequently issuing a Suspension Notice on March 12, 2015 suspending prosecution of Opposer's '367 Application (confirming that Opposer's application could be refused registration on grounds of a likelihood of confusion under Section 2(d) of the Trademark Act if Applicant's '107 Application reaches registration, all to the detriment of Opposer and Opposer's goodwill in its CHURCHILL BAR Mark, given Opposer's status as the senior user of its CHURCHILL BAR Mark in U.S. commerce by more than eighteen (18) years, as compared to the mark of Applicant's intent-to-use '107 Application opposed herein).

8. Applicant's proposed mark was published for opposition in the Official Gazette on September 15, 2015.

9. Applicant's proposed mark is confusingly similar to Opposer's CHURCHILL BAR Mark in overall appearance, sound, and connotation (with Applicant's mark including the identical "CHURCHILL" dominant element included in Opposer's CHURCHILL BAR Mark)

and is used in connection with services which are substantially related to, and fall within the same scope as Opposer's Services.

10. Due to the confusingly similar nature of Applicant's proposed mark and Opposer's CHURCHILL BAR Mark, as well as the substantially related nature of the parties' respective services, consumers and prospective consumers of Opposer's Services are likely to be confused, mistaken or deceived (within the meaning of Section 2(d) of the Trademark Act of 1946) into the belief, contrary to fact, that Applicant's Services advertised and marketed under Applicant's proposed mark, emanate from or are in some way sponsored by, or associated or affiliated with Opposer, which confusion, mistake or deception will cause irreparable damage and injury to the goodwill and reputation symbolized by Opposer's CHURCHILL BAR Mark.

WHEREFORE, Opposer requests that Applicant's '107 Application for the mark CHURCHILL STEAK HOUSE & DESIGN be rejected in its entirety and that registration of the mark be refused.

Date: October 13, 2015

Respectfully submitted,

/s/ Charles E. Phipps

Charles E. Phipps

Paul Lein

Robert E. Nail

Locke Lord LLP

2200 Ross Avenue, Suite 2200

Dallas, TX 75201-6776

214/740-8441

214/740-8441(Fax)

**ATTORNEYS FOR OPPOSER
CH REALTY VI/H DENVER BROWN
PALACE L.P.**

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Notice of Opposition was mailed via U.S. Certified mail, return receipt requested, to the following counsel of record for Applicant this 13th day of October, 2015:

Barry L. Haley
Malin Haley Dimaggio & Bowen PA
1936 South Andrews Avenue
Fort Lauderdale, Florida 33316

/s/ Robert E. Nail
Robert E. Nail

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Barry L. Haley, Esq.
Malin Haley Dimaggio & Bowen PA
1936 South Andrews Ave.
Fort Lauderdale, FL 33316

PS Form 3800, January 2013

See Reverse for Instructions

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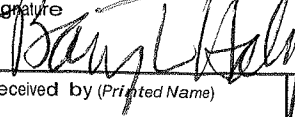
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Barry L. Haley, Esq.
Malin Haley Dimaggio & Bowen PA
1936 South Andrews Ave.
Fort Lauderdale, FL 33316

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